

## EN BANC

[ G.R. No. 134826, July 06, 1999 ]

**RENE CORDERO, PETITIONER, VS. COMMISSION ON ELECTIONS,  
MUNICIPAL BOARD OF CANVASSERS OF ESTANCIA, ILOILO AND  
TRUMAN LIM, RESPONDENTS.**

### RESOLUTION

**PANGANIBAN, J.:**

In pre-proclamation controversies, objections to the inclusion or exclusion of election returns in the canvass must be reduced to writing in the form prescribed by the Commission on Elections (Comelec). This requirement prescribed by Republic Act No. 7166 is mandatory; any appeal of a ruling of the board of canvassers shall be summarily dismissed by the Comelec, unless the accomplished forms and the supporting evidence are appended thereto.

#### The Case

Before us is a Petition for *Certiorari* under Rules 64 and 65 of the Rules of Court assailing the Resolution<sup>[1]</sup> of the Commission on Elections (Second Division)<sup>[2]</sup> dated July 28, 1998, the dispositive portion of which reads:

"WHEREFORE, premises considered, this Commission (SECOND DIVISION), RESOLVES to AFFIRM the rulings of the respondent Municipal Board of Canvassers including in its canvass the election returns from the contested precincts. Respondent board is hereby DIRECTED to RECONVENE and FINISH the canvassing of the remaining or uncontested returns and thereafter, PROCLAIM the winning mayoralty candidate of Estancia, Iloilo."

In its Resolution<sup>[3]</sup> dated August 13, 1998, the Comelec en banc<sup>[4]</sup> denied petitioner's motion for reconsideration and affirmed the assailed Resolution.

Hence, this Petition.<sup>[5]</sup>

#### The Facts

In the May 1998 elections, Rene Cordero and Truman Lim were candidates for mayor in the Municipality of Estancia, Iloilo. During the canvassing of votes by the municipal board of canvassers (MBOC), Petitioner Cordero contested, through his counsel, the inclusion of the election returns from several precincts.<sup>[6]</sup> He objected on the ground that the returns were tampered with, altered, manufactured and/or lacked material data. Despite these objections, the MBOC included in the canvass the questioned election returns.

On May 25, 1998, petitioner appealed the MBOC action to the Comelec. On July 11, 1998, he appealed another MBOC order for the inclusion of a different set of contested election returns<sup>[7]</sup> in the canvass. In both appeals, he sought the exclusion of such returns.

### **Ruling of the Comelec**

After finding that petitioner failed to comply with the procedure mandated in Section 36, paragraphs c and h, of Comelec Resolution No. 2962 promulgated January 5, 1998, the Comelec (Second Division) issued the assailed Resolution, affirming the MBOC rulings to include in the canvass the election returns from the contested precincts. Pursuant to said Resolution 2962, parties objecting to the inclusion of election returns in the canvass must submit their written objections in the form prescribed by the Comelec, with the evidence in support thereof; any appeal brought before the Comelec without the accomplished forms and the evidence attached thereto shall be summarily dismissed. According to the Comelec, the petitioner failed to attach to his appeals his *written* objections and the evidence in support thereof. The dismissal of his appeals was therefore warranted. The poll body further directed the MBOC of Estancia, Iloilo, to reconvene and finish the canvass and thereafter to proclaim the winning candidate.

Petitioner filed a motion for reconsideration which, as earlier stated, the Comelec en banc denied in its August 13, 1998 Resolution. Meanwhile, the MBOC of Estancia reconvened, pursuant to the directive in the July 28, 1998 Resolution.

In his Petition filed before this Court, petitioner also prays for the issuance of a temporary restraining order and/or a writ of preliminary injunction, to enjoin public respondent from including in its canvass the contested election returns from the enumerated precincts and from proclaiming the winning mayoralty candidate. Petitioner further seeks (1) the nullification of the Comelec Resolution dated July 28, 1998; (2) the exclusion of the election returns coming from the protested precincts, particularly Precinct Nos. 50-A, 50-A-1, 62-A and 62-A-1, 64-A, 59-A and 60-A, 46-A, 56-A, 34-A, 51-A, 61-A, and 67-A; and (3) the proclamation by the MBOC of the winning candidate based on the election returns that have not been excluded.

On August 25, 1998, this Court issued a Temporary Restraining Order commanding public respondent "to CEASE and DESIST from proclaiming private respondent or the winning mayoralty candidate for the Municipality of Estancia, Iloilo." But since private respondent and the other winning municipal candidates had already been proclaimed as early as August 21, 1998, petitioner filed a motion before this Court to suspend the effects of the proclamation of Private Respondent Lim as the duly elected mayor and to prevent him from exercising the powers and the prerogatives of the Office of the Mayor. Conformably, this Court, on September 1, 1998, issued another Order directing "Respondent Truman Lim to CEASE AND DESIST from assuming the office of the mayor of Estancia, Iloilo or should he be presently occupying said office, to VACATE the same immediately."

### **Issues**

Imputing errors to the Comelec Resolution, petitioner alleges:

"a) That the Respondent Comelec erred in ordering that the

protested election returns be included in the canvass"

"b) That the Respondent Comelec erred in ruling that the appeal to the Comelec from the ruling of the MBOC should be summarily dismissed because it is without the accomplished forms and the evidence appended thereto"

"c) That the Respondent Comelec erred in finding that the petitioner failed to justify the exclusion of the contested returns"

"d) That the Respondent Comelec erred in ignoring the affidavits submitted by the petitioner in support of his appeals before the Respondent Comelec"

"e) That the Respondent Comelec erred in ordering the respondent MBOC Estancia to include in the canvass the election returns from the contested precincts"

In brief, the pivotal issue boils down to whether the Comelec gravely abused its discretion (not "erred")<sup>[8]</sup> in dismissing the petitioner's appeals on the ground that he failed to attach his written objections and other supporting evidence.

### **This Court's Ruling**

The petition is devoid of merit.

### **Pivotal Issue:** **Procedure in the Appeal of** **Rulings of the Board of Canvassers**

Petitioner asserts that the two separate appeals should not have been dismissed on the basis of lack of supporting evidence, because at the time the first appeal was filed, the MBOC had not yet issued any ruling that could be attached to the appeal. He adds that the appeals were made precisely because the MBOC irregularly included in the canvass the election returns that he had sought to be excluded.

In pre-proclamation controversies, the rules on presenting evidence and appealing the rulings of the board of canvassers are mandatory.<sup>[9]</sup> The plain and simple procedure prescribed is outlined in detail in Section 20 of Republic Act No. 7166, which reads:

"SEC. 20. *Procedure in Disposition of Contested Election Returns.* -- (a) Any candidate, political party or coalition of political parties contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized under Article XX or Sections 234, 235 and 236 of Article XIX of the Omnibus Election Code shall submit their oral objection to the chairman of the board of canvassers at the time the questioned return is presented for inclusion in the canvass. Such objection shall be recorded in the minutes of the canvass.

(b) Upon receipt of any such objection, the board of canvassers shall automatically defer the canvass of the contested returns and shall